

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER 98-0269**  
**SALES TAX**  
**For Tax Periods: 1995-1996**

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**1. Sales and Use Tax – Cold Storage**

**Authority:** IC 6-2.5-3-2 (a), 45 IAC 2.2-5-1 (g).

Taxpayer protests the assessment of tax on its cold storage facility.

**2. Sales and Use Tax - Lump Sum Contracts.**

**Authority:** IC 6-2.5-4-9.

Taxpayer protests the assessment of tax on a lump sum contracts.

**Statement of Facts**

Taxpayer is in the business of rendering public transportation and the storage of frozen commodities. After an audit, Taxpayer was assessed additional use tax. Taxpayer timely protested the assessment. Further facts will be provided as necessary.

**1. Sales and Use Tax – Cold Storage**

**Discussion**

Taxpayer uses refrigerated trucks it owns or it contracts for on behalf of the customer to transport frozen food commodities from a location designated by Taxpayer to its cold storage facilities. At a later date, upon the receipt of further shipping instructions, Taxpayer will transport the goods from its storage facilities to the location designated by Taxpayer. The customer pays an arranged fee for the transportation services. Taxpayer's cold storage facilities are used to warehouse the customer's goods. Warehousing of specific goods is usually for no longer than a week or two, but sometimes will last for a few months. A warehousing fee, separate from the transportation fee, is imposed on the customer. The warehousing fee is a monthly fee. If the customer warehouses goods for any period of time during the month, the monthly fee is charged. Fees are not prorated. Many customers will use the space to warehouse a rotation of goods being stored for short periods. Taxpayer protests the assessment of use tax on tangible personal property and electricity used in the cold storage facility.

Indiana imposes a use tax on the "storage, use, or consumption of tangible personal IC 6-2.5-3-2 (a). There are several statutory exemptions to the use tax. Taxpayer contends that these items qualify for exemption pursuant to IC 6-2.5-5-27 as follows:

Transactions involving tangible personal property and services are exempt from the state gross retail tax, if the person acquiring the property or service directly uses or consumes it in providing public transportation for persons or property.

This statute is further explained at 45 IAC 2.2-5-61 (g) as follows:

Storage facilities and equipment. . . . tangible personal property directly used for temporarily storing persons or property being transported is exempt from tax because temporary storage is considered to be an integral part of rendering transportation.

The regulation gives several examples of temporary storage facilities which would qualify for exemption from the gross retail tax. Some of these examples include facilities to store airline passengers' luggage until it can be loaded on a plane and a carrier temporarily storing property until it can be loaded for further shipment. In each of these cases there is no additional charge for the storage.

In Taxpayer's situation the storage is significantly more than the temporary type of storage which would be exempt pursuant to the statute and regulation. This is not storage to facilitate the routine transfer of the goods or to deal with unexpected delays. This storage is a separate and distinct business activity. The customers request the storage for their own benefit and pay for the service.

### **Finding**

Taxpayer's protest is denied.

## **2. Sales and Use Tax** - Lump Sum Contracts.

### **Discussion**

During the tax period, Taxpayer entered into several lump sum contracts for improvements to realty. Since Taxpayer routinely gave out exemption certificates, tax was assessed on the total value of the lump sum contracts.

Contractors are liable for gross retail tax when the contractor converts materials into realty pursuant to a lump sum contract unless they receive an exemption certificate from the purchaser. IC 6-2.5-4-9. Two of the contractors received exemption certificates from the purchaser. Therefore, Taxpayer owes the gross retail tax on those contracts. There is no evidence in this case that Taxpayer gave an exemption certificate to any of the other contractors. Therefore those contractors are liable for the gross retail tax due on the lump sum contracts for improvements to realty.

### **Finding**

Taxpayer's protest is sustained in part and denied in part.